HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.50 of 2007

Between:

The Singareni Collieries Company Limited,
represented by its General Manager (Personnel),
Kothagudem, Khammam District.

…Appellant

And

The Assistant Commissioner (Central),
Government of India, Ministry of Labour,
Vijayawada and another.

…Respondents

:: J U D G M E N T ::

Counsel for the appellant : Ms. V. Uma Devi for
Sri K. Srinivasa Murthy

25th April, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade the learned Single Judge to quash order dated 23-11-2002 passed by Assistant Labour Commissioner (Central)-cum-Controlling Authority under the Payment of Gratuity Act, Vijayawada (respondent No.1 herein), the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The facts necessary for deciding the appeal are as under:

i) Respondent No.2 – S.R. Sonwalkar, who retired from the service of the appellant company as General Manager in 1998 filed an application under Section 7 of the Payment of Gratuity Act, 1972 (for short, 'the Act') with the complaint that he had not

been paid the amount of gratuity due to him.

ii) By an order dated 31-1-1999, respondent No.1 directed the appellant to pay the amount of gratuity i.e. Rs.2,50,000/- to respondent No.2.

iii) The appellant challenged the abovementioned order by filing an appeal under Section 7(7) of the Act, which was dismissed by the Appellate Authority on 30-6-2000.

iv) Questioning the original as well as appellate orders, the appellant filed Writ Petition No.10014 of 2002, which is pending adjudication.

v) By an order dated 10-6-2002, this Court stayed the recovery of interest, but made it clear that respondent No.2 shall be entitled to withdraw the principal amount.

vi) In the meanwhile, the Act was amended and in terms of the amended Act, the respondent became entitled to receive gratuity amounting to Rs.3,50,000/-. Therefore, he filed an application in Form-N under Rule 10 (1) of the Payment of Gratuity (Central) Rules, 1972 (for short, 'the Rules') for payment of balance gratuity. The same was registered as Case No.49/2002.

vii) By an order dated 23-11-2002, respondent No.1 directed the appellant to pay the balance amount of gratuity. Thereafter, the appellant filed WPMP No.30826 of 2002 in Writ Petition No.10014 of 2002 for permission to retain Rs.71,060/- out of the balance amount of gratuity by contending that the same is recoverable from respondent No.2. The latter filed detailed counter-affidavit dated 30-12-2002. (It is not clear from the record of this appeal whether any order was passed by the learned Single Judge in WPMP No.30826 of 2002). However, this much is evident that respondent No.2 approached District Collector, Khammam for recovery of the amount in terms of order dated 23-11-2002 passed by respondent No.1. On coming to know of this, the appellant filed WPMP No.26347 of 2003 in Writ Petition

No.10014 of 2002 for stay of the proceedings pending before District Collector, Khammam. The same was disposed of by the learned Single Judge on 29-10-2003 in the following terms:

> "In view of the orders passed by the Controlling Authority/Assistant Labour Commissioner, Vijayawada, under P.G. Act, 1972 in Case No.49/2002, the interim order passed by this Court on 10-6-2002 is modified to the following effect:
>
> "There shall be stay of payment of interest. However, the petitioner shall also deposit the amounts as directed by the authority in its order, dated 23.11.2002 in case No.49/2002. However, even to the extent of payment of interest if any in pursuance of the order dated 23.11.2002 shall stand stayed. The petitioner shall deposit the said amount within a period of one month from today.
>
> Post the writ petition for final hearing after Sankranthi Vacation."

viii) Immediately thereafter, the appellant filed Writ Petition No.23141 of 2003 questioning the legality of order dated 23-11-2002 passed by respondent No.1 in case No.49/2002. It also filed WPMP No.29048 of 2003 for stay of the proceedings pending before respondent No.1 for recovery of the balance amount of gratuity. On 4-11-2003, the learned Single Judge passed an ex parte interim order, which reads as under:

> "There shall be an interim direction subject to the condition of the petitioner depositing half of the amount awarded by the authority below within a period of four weeks from today and on such deposit the respondent is at liberty to withdraw the same without furnishing any security.

ix) On receipt of notice of Writ Petition No.23141 of 2003, respondent No.2 filed affidavit dated 20-12-2003 and prayed that interim order dated 4-11-2003 may be vacated and the writ petition may be dismissed by asserting that the petitioner had not approached the Court with clean hands.

x) The learned Single Judge considered the facts brought on the record of Writ Petition No.23141 of 2003 and passed the order

under challenge, the relevant portions of which are extracted below:

"Admittedly, as per the revised ceiling limit of the gratuity, the 2nd respondent is entitled to payment of total payment of gratuity of Rs.3,50,000/-. Out of which, Rs.2,50,000/- was already paid to him and, therefore, the 2nd respondent is only entitled to the differential amount of gratuity of Rs.1,00,000/-

It is stated that the Assistant Labour Commissioner (Central), in his order dated 23.11.2002, directed the petitioner to pay the 2nd respondent the balance amount of gratuity of Rs.1,00,000/-. There is no dispute that previously, the petitioner never wanted to question the said order. Therefore, I am of the view that W.P.No.23141 of 2003 filed by the petitioner without complying with the earlier direction granted by this Court is unjustified. The said order passed by the 1st respondent with regard to the payment of gratuity of Rs.3,50,000/- after deducting Rs.2,50,000/- to the 2nd respondent which is a differential amount of gratuity of Rs.1,00,000/- was not at all questioned by the petitioner. The 1st respondent, after issuing the show cause notice dated 30.4.2003, after making necessary enquiry and after giving reasonable opportunity, passed final orders and the impugned notice for the payment of gratuity is only a consequential order to the Application No.49 of 2002. The order passed in Application No.49 of 2002, dated 23.11.2002 is a final order and the management never questioned the said order. Therefore, it is not open for the petitioner to question the said order by way of filing this writ petition when the earlier order dated 31.1.1999 with regard to the payment of gratuity was upheld by the appellate authority in Appeal No.2 of 1999 by an order dated 30.6.2000 under Endorsement No.36/2/1999-E1, dated 8.8.2000 which is the subject matter of W.P.No.10014 of 2000."

We have heard Ms.V. Uma Devi and scrutinised the record. In our opinion, the appeal is liable to be dismissed on the ground that while instituting Writ Petition No.23141 of 2003, the appellant concealed the facts relating to order dated 29-10-2003 passed in WPMP No.26347 of 2003 in Writ Petition No.10014 of 2002 whereby the appellant was directed to deposit the amount in terms of order dated 23-11-2002 passed by respondent No.1 in Case No.49/2002.

Else, there would have been no occasion for the learned Single Judge to pass contradictory interim orders. Therefore, by applying the rule that a person who does not approach the Court with clean hands is not entitled to relief under Article 226 of the Constitution of India, we decline to entertain the appellant's prayer for setting aside the order under challenge.

We also agree with the learned Single Judge that the direction given by respondent No.1 to the appellant to pay the balance amount of gratuity to respondent No.2 does not suffer from any jurisdictional infirmity or error of law apparent on the face of the record warranting interference under Article 226 of the Constitution of India. The entitlement of respondent No.2 to receive the balance gratuity has not been questioned by the appellant. Therefore, there cannot be any justification to withhold the amount of gratuity on the pretext that some amount has to be recovered from respondent No.2.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.79 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

25th April, 2007

C.V. NAGARJUNA REDDY, J.

svs